



State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS

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DATE: December 22, 2005

TO: All Consumer Loan Companies

FROM: Chuck Cross, Director of Consumer Services

Enclosed is a copy of the Rulemaking Order, Form CR-102, regarding the licensing and regulation of consumer loan companies. The amendments to the rules reflect changes made to the Consumer Loan Act in 2001 and 2002 and additional clarifying language for existing rules that needed updating. As a result of the Governor's Executive Order 05-03, we repealed all the old rules and redrafted them in "Plain Talk" with each section beginning with a commonly asked question. We hope this makes the rules more user friendly for licensees and the public.

We have been working on these rules since last spring with a number of interested parties. Now we are giving you the opportunity to review the rules and add your comments either by attending the hearing or sending us a comment letter by January 24, 2006.

We plan to hold a hearing on these rules on January 24, 2006, at 10:00 am at our headquarters located at 150 Israel Rd SW, Tumwater, Wa. You can review the entire proposal at <http://dfi.wa.gov/resources/rulemaking.htm> or if you would like us to send you a hard copy of the rules, you can contact Jeanette Terry at (360) 902-8786.

In summary, the proposed rules:

- Add definitions necessary to incorporate the statutory changes and other amendments;
- Clarify what loans are subject to the Act;
- Clarify the transactions covered by the Consumer Loan Act versus those covered by the Mortgage Broker Practices Act;
- Expand the documentary requirements for a license application;
- Eliminate the licensing requirement for providing certain back office services;
- Clarify the coverage requirements for the surety bond;
- Clarify the grounds for denying, conditioning, suspending, and revoking a license;
- Clarify use of a name other than the name on the license;
- Provide for sanctions for failure to file the annual assessments and worksheet when due;
- Clarify the calculation of the annual fee;
- Provide for additional reporting for significant events;
- Clarify the federal and state acts applicable to lending and brokering loans under the Consumer Loan Act;
- Clarify the authority to maintain electronic records; and
- Expand the prohibited business practices.

AMENDATORY SECTION (Amending WSR 96-04-013, filed 1/26/96, effective 2/26/96)

WAC 208-620-010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter 31.04 RCW.

~~(("Add-on method" means the method of precomputing interest payable on a loan by adding the interest to be earned to the principal balance. This total, plus any charges allowed under this chapter, is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms.))~~

"Affiliate" means any person who controls, is controlled by, or is under common control with another.

"Annual percentage interest rate" means the rate of interest specified in the note.

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Section 226 et seq.

"Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Section 103.

"Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

"Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

"Department" means the department of financial institutions.

"Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. § 1735f-7a.

"Director" means the director of the department of financial institutions or his or her designated representative.

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. section 1691 and Regulation B, 12 C.F.R. Section 202.

"Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Section 1681 et seq.

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. sections 1692 through 1692o.

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. section 45(a).

"Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or others

documents, or transferring certificates of title to vehicles.

"Gramm-Leach-Bliley Act" means the Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. sections 6801 through 6809 and 6821 through 6827.

"Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. sections 2801 through 2810 and 12 C.F.R. Section 203.

"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.

"Lender" means any person that extends money to a borrower with the expectation of being repaid.

"License" means a license issued under the authority of this chapter with respect to a single place of business.

"Licensee" means a person who holds one or more current licenses.

"Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

"Loan" means a sum of money lent at interest and includes both open-end and closed-end transactions.

"Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

"Out-of-state licensee" means any licensee that does not maintain a physical presence within the state.

"Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

"Principal" means either (1) any person who controls, directly or indirectly through one or more intermediaries, a ten percent or greater interest in a partnership, company, association or corporation; or (2) the owner of a sole proprietorship.

"Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

"Principal balance" means the principal amount plus any allowable origination fee.

"RCW" means the *Revised Code of Washington*.

"Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sections

2601 et seq., and Regulation X, 24 C.F.R. Sections 3500 et seq.

"Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

"Senior officer" means an officer of a consumer loan company at the vice-president level or above.

"Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Each payment shall first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. In using such method, interest shall not be payable in advance or compounded.

"State" means the state of Washington.

"Subsidiary" means a person that is controlled by another.

"Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. § 6101 to 6108.

"Third-party service provider" means any person other than the licensee who provides goods or services to the licensee in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

"Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sections 1601 et seq., and Regulation Z, 12 C.F.R. Sections 226 et seq.

LICENSING

NEW SECTION

WAC 208-620-230 Do I need to apply for a consumer loan license if I am lending money in the state of Washington? In order to make credit available to high-risk borrowers the act authorizes interest rates up to twenty-five percent for certain types of loans, subject to the requirements of the act. If you are in the business of making secured or unsecured loans of money or credit at rates above those allowed under chapter 19.52 RCW, the Usury Act, and you do not qualify for an exception under RCW 31.04.025, you must hold a license to avoid noncompliance with the Usury Act. The current allowable rate under RCW 19.52.020 is twelve percent or less but that rate may change.

NEW SECTION

WAC 208-620-235 Is there a maximum rate of interest allowed under the act? The legislature authorized interest rates up to twenty-five percent for loans made under the act in order to make credit available to high risk borrowers.

NEW SECTION

WAC 208-620-240 Once I am licensed, does the act apply to all loans I make or only those above twelve percent? All loans you make as a licensee are subject to the authority and restrictions of the act including the provisions relating to the calculation of the annual fee.

NEW SECTION

WAC 208-620-245 Does the Consumer Loan Act allow me to make one or two loans subject to the act without being licensed? The act applies to all loans made by licensees and does not provide an exemption for a de minimus number of loans. If you are not licensed, the act does not apply to your transactions. See WAC 208-620-230.

NEW SECTION

WAC 208-620-250 If my out-of-state company applies for a license under the Consumer Loan Act do we have to have a branch in the state of Washington? You are not required to maintain a physical presence in this state to get a license but any location doing business under the act, wherever located, must be licensed.

NEW SECTION

WAC 208-620-260 If I get licensed under the Consumer Loan Act, can I broker loans in the state of Washington? (1) As a consumer loan licensee, you may broker loans in the state of Washington provided that those loans are brokered under either the Consumer Loan Act or the Mortgage Broker Practices Act.

(2) If you broker loans under the Consumer Loan Act, those loans are subject to WAC 208-620-240 and must be counted in the calculation of the annual assessment.

(3) If you broker loans under the Mortgage Broker Practices Act, chapter 19.146 RCW, you must comply with that act.

NEW SECTION

WAC 208-620-270 Can I make a loan subject to the act without having to get a license? If you make a loan that is subject to the act, you must either get a license or risk violating the Usury Act which limits the rate of interest a lender can charge Washington state residents. Further, if you make a loan without a consumer loan license and the loan is secured by residential real estate, you risk violating the Mortgage Broker Practices Act, chapter 19.146 RCW.

NEW SECTION

WAC 208-620-280 How do I apply for a consumer loan license? (1) **Application.** An applicant for a consumer loan company license must complete a consumer loan license application form and include all of the following:

(a) In regard to each principal, officer or member of the board of directors:

(i) The names, addresses, occupation and prior employment history including a statement of their experience and qualifications;

(ii) A description of any material litigation in which they are involved;

(iii) A signed authorization for a background investigation on a form provided by the department;

(iv) A complete set of fingerprints taken by an authorized law enforcement officer, if requested; and

(v) An independent credit report obtained from a recognized credit reporting agency, if requested;

(b) A current financial statement as of the most recent quarter end, prepared in accordance with generally accepted accounting principles. The statement does not have to be audited but must include a statement of assets and liabilities and a profit and loss statement;

(c) A current, dated organizational chart for the applicant with names and titles of all officers, managers and supervisory personnel;

(d) A current, dated organizational chart identifying the holding companies, affiliates, and subsidiaries of the applicant and percentage owned or controlled;

(e) A certificate of existence/authorization obtained from the Washington secretary of state;

(f) A valid surety bond in the amount specified in WAC 208-620-320;

(g) For out-of-state licensees, the name, address, phone number, and fax number of its registered agent;

(h) The location of its records;

(i) A description of any current material civil litigation involving the company or any of the officers, directors or owners;

(j) A portion of the fees as described in the application.

(2) **Completion of an application.** An application is not considered to be complete unless:

(a) All documents and other information requested by the department have been submitted in a completed form; and

(b) There are no unresolved complaints filed with the department or other outstanding regulatory or law enforcement issues concerning the applicant and its principals, officers and directors.

(3) **Responsible applicants.** Each of the principals, officers and directors of the entity that is applying for a license is deemed responsible for the information submitted as part of the application.

NEW SECTION

WAC 208-620-285 If my application is incomplete when I file it with the department, what will happen? For purposes of efficiency, the department may reject an incomplete application. The department may return the submission to the applicant along with an explanation of the items needed to complete the application.

NEW SECTION

WAC 208-620-290 What fees will I be charged for my application for a consumer loan license? (1) **Application fees.** The director will charge the applicant or licensee \$95.55 per hour for review of its application and attendant investigation for the following:

(a) New consumer loan company license;

(b) New branch office license;

(c) Notice of change of control; or
(d) Opinions rendered regarding interpretations of statutes and rules.

(2) **Licenses.** The licensee will be charged \$106.71 for the issuance of the following licenses:

- (a) New or replacement main office licenses; or
- (b) New or replacement branch licenses.

NEW SECTION

WAC 208-620-300 If I want to open more than one office, do I have to file an application for each location? A licensee must complete a consumer loan license application for each consumer loan company branch office, loan servicing location or direct solicitation location, and provide evidence of surety bond coverage for any additional branch. The director may require that all or some of the information provided in the original application be updated.

NEW SECTION

WAC 208-620-310 Is it necessary to license an office that is only providing underwriting and other back-office services? A location that is solely providing underwriting and other back-office services on Washington loans and has only incidental contact with the borrower, is not required to be licensed.

NEW SECTION

WAC 208-620-320 What is the amount of the bond required for my consumer loan license? (1) **Loans not secured by real estate.** For licensees making loans not secured by real property, the penal sum of the bond is one hundred thousand dollars for each office up to five locations. For each additional branch office over five, the amount of the bond must be increased by ten thousand dollars.

(2) **Loans secured by real estate.** For a licensee making loans secured by real property, the penal sum of the bond is four hundred thousand dollars for the first location and one

hundred thousand dollars for each branch office up to five licensed locations. For each additional branch office over five, the amount of the bond must be increased by ten thousand dollars. For example:

Number of Branch Offices	Penal Sum of Bond - Licensee making non real estate loans	Penal Sum of Bond - Licensee making real estate loans
1	\$100,000	\$400,000
2	\$200,000	\$500,000
3	\$300,000	\$600,000
4	\$400,000	\$700,000
5	\$500,000	\$800,000
6	\$510,000	\$810,000
7	\$520,000	\$820,000
8	\$530,000	\$830,000
9	\$540,000	\$840,000
10	\$550,000	\$850,000

NEW SECTION

WAC 208-620-330 Does the surety bond need to reflect coverage for licensee and its W-2 employees and independent contractors? The surety bond needs to cover both the licensee and all types of employees working for the licensee. If a licensee has independent contractors, exclusive or otherwise, the bond needs to cover them, as well as employees of the licensee.

NEW SECTION

WAC 208-620-340 Do I have any alternative to maintaining a surety bond? Bond substitute.

(1) **Washington business corporation.** A licensee that is a Washington business corporation may maintain a bond substitute, as defined in WAC 208-620-010, in lieu of a surety bond.

(2) **Amount of the bond substitute.** The licensee must maintain unimpaired capital in an amount so that the aggregate sum of the licensee's debt, including outstanding promissory notes or other evidences of debt, does not at any time exceed three times the amount of its bond substitute.

(3) **Long-term subordinated debt.** Long-term subordinated debt, as defined in WAC 208-620-010, may be excluded from the licensee's debt for purposes of calculating the bond substitute only if any claim by the subordinate debtholder on the licensee's assets is junior to claims by the state or a consumer under the act. The licensee must file with the director a subordination agreement in favor of the state.

(4) **Bad debts and uncollectible judgments.** A licensee that maintains a bond substitute may not consider bad debts and uncollectible judgments as assets for purposes of calculating the bond substitute. A bad debt is any debt owed to the licensee upon which any payment is six months or more past due. An uncollectible judgment is any judgment which is more than two years old and which has not been paid.

(5) **Review of requirements.** The director may evaluate the documentation submitted by the licensee or other documentation requested by the director to determine whether the bond substitute meets the requirements of RCW 31.04.045(3).

NEW SECTION

WAC 208-620-350 If I qualify to use a bond substitute in lieu of a surety bond, what documentation do I have to provide to the department? (1) **Semiannual financial statements required.** A licensee that maintains a bond substitute must submit semiannually to the director year-to-date financial statements prepared in accordance with generally accepted accounting principles, including at a minimum a statement of assets and liabilities and a profit and loss statement.

(2) **More frequent financial reporting.** The director may require that financial reports be submitted more frequently if past financial reports have been prepared incorrectly or were misleading or if there is substantial risk that the licensee will violate the bond substitute standard.

(3) **Additional information to be filed.** The director may require other documents, agreements and information deemed necessary to properly evaluate and ensure that the licensee remains in compliance with this section.

(4) **Failure to file financial statements as required.** The director may require a licensee that fails to file its financial

statements under subsection (1) of this section to obtain a surety bond within thirty days of that failure. Failure to obtain the bond as required may result in suspension or revocation of the licensee's license.

NEW SECTION

WAC 208-620-360 What if I choose the bond substitute alternative and my unimpaired capital falls below the minimum?

(1) **Failure to maintain sufficient unimpaired capital.** A licensee that does not maintain a sufficient bond substitute shall notify the director within ten days as required by WAC 208-620-490. The licensee must then obtain and file with the director a surety bond in the amount required by WAC 208-620-320 within twenty days after receiving notice from the director. A licensee that files a surety bond under this section must maintain the surety bond for five years after the date of noncompliance. During this five-year period, the director will not accept a bond substitute.

(2) **Failure to obtain a surety bond.** Failure to file a surety bond as required in this section may result in suspension or revocation of the licensee's license(s).

NEW SECTION

WAC 208-620-370 What are the grounds for denying or conditioning my license application? The director may deny or condition approval of a license application if the applicant or any principal, officer, or board director of the applicant:

(1) **Failing to pay.** Fails to pay a fee due the department;

(2) **Failing to demonstrate financial responsibility or fitness.** Fails to demonstrate financial responsibility, experience, character, and general fitness to operate a business honestly, fairly, and efficiently within the purposes of the Consumer Loan Act. The director may find that the person has failed to make the demonstration if, among other things:

(a) The person is or has been subject to an injunction or an administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act, the Insurance Code, the Securities Act, or similar laws in this or another state; or

(b) An independent credit report issued by a recognized

credit reporting agency indicates that the person has a history of unpaid debts; or

(c) The person is the subject of a criminal felony indictment, or a criminal misdemeanor charge involving dishonesty or financial misconduct; or

(d) The person is insolvent in the sense that the value of the applicant's or licensee's liabilities exceeds its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature;

(3) **Misrepresentations or omissions.** Has omitted or concealed a material fact from the department or has misrepresented a material fact to the department;

(4) **Prior business conduct.** Has been found to have committed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(5) **Failure to complete the application.** Has failed to complete its application as defined in WAC 208-620-280, within a reasonable time after being notified that the department considers the file abandoned for failure to provide requested information or documentation.

NEW SECTION

WAC 208-620-380 Are there any additional requirements for out-of-state licensees? (1) **All locations must be licensed.** Any person that conducts business under the act with Washington residents must obtain a license for all locations from which business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310.

(2) **Keeping records out-of-state.** The director may approve the maintenance of a licensee's records at an out-of-state location. The licensee must request approval in writing and must agree to provide the director access to the records and pay the hourly rate plus travel costs pursuant to WAC 208-620-590. Agreement to allow access to the records is a condition of licensing of an out-of-state location.

(3) **Service on out-of-state licensee.** An out-of-state licensee's registered agent is the licensee's agent for service of process, notice, or demand.

NEW SECTION

WAC 208-620-390 If I am offering loans by mail or internet to Washington residents, do I have to license those locations? Any person that conducts business under the act with Washington residents must obtain a license for all locations including those that offer loans by mail or internet.

NEW SECTION

WAC 208-620-395 Do I need to display my license in my place of business? Yes. The main office and branch office license must be conspicuously displayed at the licensed location.

NEW SECTION

WAC 208-620-400 Can I share an office with another business? (1) A licensee may conduct its business in a licensed location in which other persons are engaged in business.

(2) If the licensee has effective control over the person sharing space, or the person sharing space with the licensee has effective control over the licensee or is under common control with the other by a third person or is a corporation related to another corporation as parent to subsidiary and one refers business incident to or a part of a real estate settlement service to the other, the licensee must comply with RESPA Sec. 3500.15, including required disclosures and prohibitions on referral fees.

NEW SECTION

WAC 208-620-410 May I sell other types of products from my licensed location? A licensee may engage in the sale of incidental products on the premises of the licensed location only after receiving approval from the director. For the purpose of this section "incidental" means products or services not related to the original loan, including, but not limited to, warranties, insurance, and prepaid legal services. The cost of the products may, at the consumer's option, be paid from the proceeds of the loan and included in the principal balance provided that:

(1) The purchase of the product is not a factor in the approval of credit and this fact is clearly disclosed in writing to the consumer; and

(2) The consumer gives the licensee written permission to purchase the product after receiving disclosure of the terms and cost.

NEW SECTION

WAC 208-620-420 May I transact business in a name other than the name on my license? No. A licensee may transact business such as making a loan or providing applicable disclosures only under the name on the license. A licensee may apply to the department to add a trade name to its license but it may not use the DBA (doing business as) alone to transact business.

NEW SECTION

WAC 208-620-425 May I transfer my license? No. A license is given to a specific entity with specific individuals. If all or part of the business is transferred or sold to another person, the licensee is required to notify the department prior to transfer so the department can determine if the new person is qualified to own all or part of the business.

LICENSEE REPORT REQUIREMENTS

NEW SECTION

WAC 208-620-430 What are my annual filing requirements as a consumer loan licensee? (1) **Annual report due March 1st.** Each year a licensee is required to file a consolidated annual report on a form provided by the department and pay a fee based upon the amount of business conducted under the act. The director will notify each licensee at its official address of the method to calculate the annual fee due along with a worksheet for such purpose and the consolidated annual report form. The licensee will calculate the annual fee on the worksheet. The licensee must deliver its completed consolidated annual report, worksheet and annual fee to the department by March 1st of the following year.

(2) **Late penalties.** A licensee that fails to submit the required annual report and worksheet by the March 1st due date is subject to a penalty of fifty dollars per report for each day of delay. For example, if the department receives the consolidated annual report and worksheet on March 4th, the licensee would have to pay an additional three hundred dollars as a late penalty.

(3) **Failure to file.** If a licensee fails to pay its annual assessment and file a worksheet by April 1st the director may file a claim against the licensee's surety bond for failing to faithfully conform to and abide by the Consumer Loan Act. The department may make a claim on the licensee's surety bond for the late penalties under subsection (2) of this section and the greater of:

- (a) The assessment paid the previous year;
- (b) The average annual assessment paid in the previous two years; or
- (c) Fifteen hundred dollars.

NEW SECTION

WAC 208-620-440 How do I calculate my annual fee? (1) **Calculation of the annual fee.** Each licensee will pay an annual assessment fee based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment fee is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.

(2) **All loans counted in fee calculation.** The "adjusted total loan value" is the sum of:

(a) The total unpaid balance of all loans as of year end, both under and over twelve percent interest, made or brokered under the act to Washington residents that were retained, brokered or purchased by the licensee; and

(b) The total unpaid balance of all loans as of year end, both under and over twelve percent, made or brokered under the act to Washington residents that were sold by the licensee with servicing retained (if any); and

(c) The total amount of all loans as of year end, both under and over twelve percent interest, made or brokered under the act to Washington residents that were sold by the licensee during the previous calendar year with servicing released (if any).

NEW SECTION

WAC 208-620-460 Do I have to file my annual report even if I go out of business during the year? (1) A licensee that ceases operations during the year must file the consolidated annual report and pay the annual assessment required in WAC 208-620-430 within thirty days of closure.

(2) Failure to file will trigger bond claim as described in WAC 208-620-430(3).

NEW SECTION

WAC 208-620-470 Do I need to notify the director if I move the location of my office? Before doing business under the act from a new location, either a main office or a branch office, a licensee must file an amendment for a change of address and obtain approval from the director.

NEW SECTION

WAC 208-620-475 Must I notify the department if I cease doing business in this state if I am doing business in other states? You must either notify the department when you cease doing business in the state of Washington or continue to file your annual report and worksheet each year. In order to end your filing responsibilities, you must file a Consumer Loan Closure Form along with your final annual report and worksheet, any fees owed, and return your license certificate.

NEW SECTION

WAC 208-620-480 What are my filing responsibilities if my company files for bankruptcy? (1) **Chapter 7 bankruptcy.** A licensee that files for chapter 7 bankruptcy must notify the director within ten days, surrender its license(s) and deliver the consolidated annual report and worksheet for the period in business that year within sixty days of filing bankruptcy.

(2) **Chapter 11 bankruptcy.** A licensee that files for chapter 11 bankruptcy must notify the director within ten days.

NEW SECTION

WAC 208-620-490 What are my reporting responsibilities when something of significance happens to my business? (1) Prior notification required. A licensee must notify the director in writing ten days prior to a change of the licensee's:

(a) Principal place of business or any of its branch offices;

(b) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(c) Name and mailing address of the out-of-state licensee's registered agent;

(d) Legal or trade name; or

(e) A change of ownership control of ten percent or more.

(2) Post notification within ten days. A licensee must notify the director in writing within ten days after an occurrence of any of the following:

(a) Change in mailing address, telephone number, fax number, or e-mail address;

(b) Cancellation or expiration of its Washington state master business license;

(c) Change in its standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(d) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340; or

(e) Receipt of notification of cancellation of the licensee's surety bond.

(3) Post notification within twenty days. A licensee must notify the director in writing within twenty days after the occurrence of any of the following developments:

(a) Receipt of notification of the institution of license revocation procedures in any state against the licensee;

(b) The filing of a felony indictment or information related to lending or brokering activities of the licensee, or any officer, board director, or principal of the licensee or an indictment or information involving dishonesty of the licensee, or any officer, board director, or principal of the licensee;

(c) The licensee, or any officer, director, or principal of the licensee is convicted of a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(d) The filing of any material litigation against the licensee.

NEW SECTION

WAC 208-620-500 What are my reporting requirements if I want to close one or more of my branch offices? (1) **Closing a branch office.** If you close a branch office, you must notify the department using the Consumer Loan Office Closure Form and return the original license.

(2) **Closing the business.** If you are going to close your business, you must notify the department using the Consumer Loan Office Closure Form, along with the annual report and worksheet, any fees due and return the original licenses.

DISCLOSURE AND OTHER OBLIGATIONS

NEW SECTION

WAC 208-620-505 In addition to the Consumer Loan Act, what other laws do I have to comply with? You must ensure you are in compliance with all federal and state laws and regulations that apply to lending or brokering loans when applicable to the transaction including the Truth in Lending Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Bank Secrecy Act, the Real Estate Settlement Procedures Act, the Gramm-Leach-Bliley Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, the Washington State Fair Housing Act, and the Federal Trade Commission Telephone Sales Rule, 16 C.F.R. Part 310.

NEW SECTION

WAC 208-620-510 What are my disclosure obligations to consumers under the Consumer Loan Act? (1) Content requirements. In addition to complying with the applicable disclosure requirements in the federal and state statutes referred to in WAC 208-620-505 if the loan will be secured by a lien on real property, you must also provide the borrower or potential borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three days of receipt of a loan application.

(2) Proof of delivery. The licensee must be able to prove that the disclosures under subsection (1) of this section were provided within the required time frames. In most cases, proof of mailing is sufficient evidence of delivery. If the licensee has an established system of disclosure tracking that includes a disclosure and correspondence log, checklists, and a reasonable system for determining if a borrower did receive the documents, the licensee will be presumed to be in compliance.

(3) Each licensee shall maintain in its files sufficient information to show compliance with state and federal law.

NEW SECTION

WAC 208-620-512 If I pull a credit report on a consumer who has identified a specific property on a purchase and sales agreement or contract, or is refinancing a specific property, is that enough to trigger the required disclosures under RESPA and TILA? Yes. At that point, you have collected enough information on behalf of the consumer for you to anticipate a credit decision under Regulation X, 24 C.F.R. Sections 3500 et seq. and you must provide the consumers with all required disclosures.

POWERS AND RESTRICTIONS

NEW SECTION

WAC 208-620-515 What authority do I have as a licensee?

(1) As a licensee you may:

(a) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(b) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(c) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;

(d) The powers listed in (a), (b), and (c) of this subsection apply only to junior lien mortgage loans, lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans and nonmortgage loans.

(2) Agree with the borrower for the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender.

(3) Charge and collect a penalty of ten cents or less on each dollar of any installment payment delinquent ten days or more.

(4) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the

collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee.

(5) Make open-end loans as provided in the act.

(6) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower.

RECORDKEEPING

NEW SECTION

WAC 208-620-520 How long do I have to maintain my records under the Consumer Loan Act? (1) **General records.** Each licensee must preserve the books, accounts, records, papers, documents, files, and other information relevant to a loan for a minimum of twenty-five months after making the final entry on that loan at a location approved by the director.

(2) **Advertising records.** A licensee must maintain a copy of all advertising for a period of twenty-five months at a location approved by the director. Such copies shall include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile or computer network.

NEW SECTION

WAC 208-620-530 Can I maintain my records electronically? (1) **Records must be available.** The records required to be maintained by RCW 31.04.145 may be maintained by means of electronic display equipment if such equipment is made available upon request to the director or his or her representatives for purposes of examination or investigation.

(2) The hardware or software needed to display the record must be maintained during the required retention period under WAC 208-620-520(1).

(3) **Hard copy upon request.** A licensee must provide the

records in hard copy upon request of the director.

NEW SECTION

WAC 208-620-540 Do I need to account separately for payments from borrowers for third party service providers? A licensee must separately account for all deposits and disbursements made by or for borrowers for third party service providers. The funds may not be used for the benefit of the licensee or any person not entitled to such benefit.

RESTRICTIONS, PROHIBITIONS AND GROUNDS FOR REVOCATION

NEW SECTION

WAC 208-620-550 What business practices are prohibited? Under RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:

(1) **Disclosure of payoff amount.** Failure to provide the exact pay-off amount as of a certain date five or fewer business days after being requested in writing to do so by a borrower of record or their authorized representative;

(2) **Recognition of payment delivery.** Failure to record a borrower's payment as received on the day it is delivered to any of the licensee's locations during its regular working hours;

(3) **Charging a fee for best efforts.** Soliciting or entering into a contract with a borrower that provides in substance that the licensee may earn a fee or commission through its "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(4) **False advertising of rates and fees.** Soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time;

(5) **False filing.** Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department;

(6) **Influencing appraisers.** Making any payment, directly or indirectly, or withholding or threatening to withhold any payment, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(7) **Documents with blanks.** Allowing a borrower to leave blanks on a document that is signed by the borrower;

(8) **False advertising.** Soliciting business using advertising that includes:

(a) An envelope or stationery that contains an official-looking emblem, such as an eagle or a crest, or that is otherwise designed to resemble an official government mailing, such as a mailing from the Internal Revenue Service or the U.S. Department of the Treasury;

(b) An envelope or stationery containing warnings or notices citing codes or form numbers made to appear like government codes or form numbers that are not required to be shown on the mailing by the U.S. Postal Service;

(c) Any suggestion or representation that the licensee is, or is affiliated with, a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent;

(d) Any suggestion or representation that the solicitation is from an entity other than the licensee;

(e) Any suggestion or representation that the information about a consumer's current loan was provided by any source other than the source disclosed pursuant to WAC 208-620-630;

(9) **Inclusion of taxes and insurance.** Failing to clearly disclose to a borrower whether the payment advertised or offered for a real estate loan includes amounts for taxes, insurance or other products sold to the borrower;

(10) **Force placed insurance.** Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower in order to verify that the asset is not otherwise insured;

(11) **Filing an inappropriate lien.** Willfully filing a lien on property without a legal basis to do so;

(12) **Threats and coercion.** Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;

(13) Failure to reconvey title to collateral, if any, within thirty business days when the loan is paid in full unless conditions exist that make compliance unreasonable.

NEW SECTION

WAC 208-620-560 What restrictions are there for charging fees other than the loan origination fee? (1) **Filing fees.** A licensee cannot charge or collect any funds from the borrower for the cost of filing, as defined in WAC 208-620-010, or for any other fees paid or to be paid to public officials, unless such charges are paid or are to be paid within one hundred eighty days by the licensee to public officials or other third parties for such filing. Any fee a licensee collects for releasing or reconveying the security for the obligation must be paid to an unrelated third party.

(2) **Returned check fees.** A licensee may not charge or collect a fee in excess of twenty-five dollars for a check returned unpaid by the bank drawn upon. Only one fee may be collected with respect to a particular check even if it has been redeposited and returned more than once.

(3) **Fees for third-party services.** A licensee may not charge or collect any fee to be paid to a third-party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid. A licensee may charge the borrower for costs of allowable third-party services as provided by RCW 31.04.105(3) at the time of application for the loan or at any time thereafter except as prohibited.

(4) **Credit and noncredit insurance.**

(a) Except for the transaction described in (b) of this subsection, a licensee may include the premiums for credit and noncredit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing and the borrower's confirmation is obtained by signature on the disclosure form.

(b) A licensee may not sell single premium credit insurance to a borrower at the inception of coverage unless the sale is in compliance with chapter 48.18 RCW.

(5) **Fees on existing loans.** Unless otherwise preempted under the Depository Institutions Deregulatory and Monetary Control Act, if a licensee makes a new loan or increases a credit line within one hundred twenty days after originating a previous loan or credit line to the same borrower, the origination fee on the new loan or increased credit line shall be limited as follows:

(a) The licensee may charge an origination fee only on that part of the new loan not used to pay the amount due on the

previous loan;

(b) The licensee may charge an origination fee only on the difference between the amount of the existing credit line and the increased credit line;

(c) The limits in (a) and (b) of this subsection do not apply if the licensee refunds the origination fee on the existing loan or credit line.

(6) **Administrative fees.** A licensee may not collect a document preparation fee, a processing fee or a courier fee unless paid to an unrelated third party and agreed to in advance by the borrower.

(7) **Prepayment penalty.** A licensee may not collect a prepayment penalty on the following loans:

(a) Any nonmortgage loan made at rates authorized by the act; or

(b) Any junior lien mortgage loan made at rates authorized by the act; or

(c) Any loan made by a licensee that is not a "creditor" under DIDMCA.

NEW SECTION

WAC 208-620-570 What are the grounds for suspending or revoking a license? The director may suspend or revoke a license if the licensee, or any principal, officer, or board director of the licensee:

(1) **Failing to pay.** Fails to pay a fee due the department;

(2) **Injunction or administrative action.** Is or has been subject to an injunction or a civil or administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act or similar laws of this state or another state;

(3) **Substantial unpaid debt.** Has accumulated substantial unpaid debt;

(4) **Violation of lending laws.** Has been found in violation of another state's lending laws, securities laws, real estate laws or insurance laws resulting in substantial license limitations or significant fines;

(5) **Criminal charges.** The person is the subject of a criminal felony charge, or a criminal misdemeanor charge involving dishonesty or financial misconduct;

(6) **Bond canceled.** Has had its surety bond canceled or revoked for cause;

(7) **Deterioration of business.** Has allowed the licensed consumer loan business to deteriorate into a condition which

would result in denial of a new application for a license;

(8) **Aiding unlicensed practice.** Has aided or abetted an unlicensed person to practice in violation of the Consumer Loan Act or the Mortgage Broker Practices Act;

(9) **Incompetence resulting in injury.** Has demonstrated incompetence or negligence that results in financial harm to a person or that creates an unreasonable risk that a person may be harmed;

(10) **Insolvency.** Is insolvent in the sense that the value of the licensee's liabilities exceeds its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature;

(11) **Failure to comply.** Has failed to comply with an order, directive, subpoena, or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee;

(12) **Misrepresentation or fraud.** Has performed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(13) **Failure to cooperate.** Has failed to cooperate with the director, or his or her designee, including without limitation by:

(a) Not furnishing any records requested by the director for purposes of conducting a lawful investigation for disciplinary actions or denial, suspension, or revocation of a license; or

(b) Not furnishing any records requested by the director for purposes of conducting a lawful investigation into a complaint against the licensee filed with the department, or providing a full and complete written explanation of the circumstances of the complaint upon request by the director;

(14) **Interference with investigation.** Has interfered with a lawful investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

EXAMINATIONS

NEW SECTION

WAC 208-620-580 As a licensee, will my business be subject to periodic examinations? Each consumer loan company can expect to be visited periodically by the department's examiners. The director or designee may examine, wherever located, the records used in the business of every licensee and of every person who is engaged in the consumer loan business, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For that purpose the director or designee shall have free access, at reasonable times during business hours, to the offices and places of business and all books and records of the business.

NEW SECTION

WAC 208-620-590 How much will I be charged for my periodic examinations and when will the payment be due? (1) **Hourly charge for examinations.** A licensee will be charged \$69.01 per hour for regular and special examinations of the licensee's records.

(2) A licensee that makes loans pursuant to the act from out-of-state locations, maintains records outside the state or services loans pursuant to the act outside the state will be charged the hourly rate plus travel costs.

(3) **Billing for the examinations.** The director will submit an invoice for the charges following the completion of any applicable examination. The charges must be paid within thirty days after the invoice is submitted to the licensee.

NEW SECTION

WAC 208-620-600 How often will the department visit my business to examine my records? There is no set schedule to examine each licensee. Licensees will be examined on a flexible schedule based upon the potential risk of the business to the public.

INVESTIGATIONS

NEW SECTION

WAC 208-620-610 What authority does the department have to investigate violations of the Consumer Loan Act? (1) Testimony. The director or designees may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing.

(2) Production of records or copies. The director or designee may require the production of books, accounts, papers, records, files, and any other information deemed relevant to the inquiry. The director may require the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, records, files, or other information.

(3) Subpoena authority. If a licensee or person does not attend and testify, or does not produce the requested books, accounts, papers, records, files, or other information, then the director or designated persons may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, records, files, or other information.

ADVERTISING RESTRICTIONS

NEW SECTION

WAC 208-620-620 How do I have to identify my business when I advertise? You must either identify the business using your Washington consumer loan license number or use the whole name on your Washington license.

NEW SECTION

WAC 208-620-630 If I send out a letter referring to a consumer's existing loan, what source information must I disclose? When an advertisement includes information about a consumer's current loan that did not come from a solicitation, application, or loan made or purchased by the licensee, the licensee shall provide to the consumer the name of the source from which this information was obtained.

NEW SECTION

WAC 208-620-640 What are the requirements when I advertise any loan subject to the Consumer Loan Act? You must comply with all the applicable advertising requirements under the federal statutes and regulations including the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Trade Act, the Telemarketing and Consumer Fraud and Abuse Act, and the Equal Credit Opportunity Act and you must conspicuously disclose the annual percentage rate implied by the rate of interest that you are advertising.

MISCELLANEOUS

NEW SECTION

WAC 208-620-650 Will the director waive fees charged under the Consumer Loan Act? The director or designee may waive any or all of the fees and assessments under this chapter when he or she determines that:

(1) The financial services regulation account exceeds the projected minimum fund balance level approved by the office of financial management;

(2) That the waiver is fiscally prudent; and

(3) Good cause is shown by the applicant for the waiver.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-620-020	License application.
WAC 208-620-030	Surety bond.
WAC 208-620-040	Bond substitute in lieu of surety bond.
WAC 208-620-050	Interstate operations.
WAC 208-620-060	Registered agent and agent's office for out-of-state licensees.
WAC 208-620-070	Change of registered agent or agent's office for out-of-state licensees.
WAC 208-620-080	Resignation of registered agent.
WAC 208-620-090	Service on out-of-state licensee.
WAC 208-620-100	Records.
WAC 208-620-110	The note.
WAC 208-620-120	Contents of disclosure statement to borrower.
WAC 208-620-130	Restrictions as to charges.
WAC 208-620-140	Open-end loans--Increase in interest--Notice to borrower.
WAC 208-620-150	Open-end loans--Periodic statements.
WAC 208-620-160	Advertising--Restrictions and requirements.
WAC 208-620-170	Knowledge of the law and regulations.
WAC 208-620-180	Examinations.
WAC 208-620-190	Schedule of fees.
WAC 208-620-191	Fee increase.
WAC 208-620-192	Waiver of fees.
WAC 208-620-200	Change of place of business.
WAC 208-620-210	Other business in same office.
WAC 208-620-220	Annual report and annual fee--Due date--Late penalties.